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# First Judicial District of Pennsylvania

*51CR00048292007*

*John In*

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*Trial (Jury) Volume 1  
September 12, 2008*



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*First Judicial District of Pennsylvania  
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[1]IN THE COURT OF COMMON PLEAS  
[2]FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
[3]CRIMINAL TRIAL DIVISION  
[4]-----  
[5]COMMONWEALTH :  
[6]:  
[7]vs. : C.P.# 51-CR-0004829-2007  
[8]:  
[9]JOHN IN :  
[10]-----  
[11]Room 801, Criminal Justice Center  
[12]Philadelphia, Pennsylvania  
[13]-----  
[14]Friday, September 12, 2008  
[15]-----  
[16]**BEFORE:** THE HONORABLE SANDY L.V. BYRD, J.  
[17]-----  
[18]JURY TRIAL  
[19]TESTIMONY OF  
[20]POLICE OFFICER FELICIA BATTLES  
[21]-----  
[22]  
[23]  
[24]

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[3]WITNESS DR. CR. RDR. RCR.  
[4](Previously presented.)  
[5]  
[6]  
[7]EXHIBITS FOR IN  
[8]NO. DESCRIPTION IDENT. EVD.  
[9](Previously presented.)  
[10]  
[11]  
[12]DEFENDANT'S EVIDENCE  
[13]WITNESS DR. CR. RDR. RCR.  
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[1]**APPEARANCES:**  
[2]  
[3]LAUREN BARALDI, ESQUIRE  
[4]Assistant District Attorney  
[5]For the Commonwealth  
[6]  
[7]RICHARD GIULIANI, ESQUIRE  
[8]Attorney for the Defendant  
[9]  
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[1]---  
[2](The Court, Commonwealth's  
[3]attorney, Defense attorney, and defendant  
[4]present in the courtroom.)  
[5]---  
[6]**MR. GIULIANI:** With the Court's  
[7]permission, we are going to be playing the  
[8]tape during her testimony, the transmission  
[9]and such. We are only playing a portion of  
[10]it.  
[11]**THE COURT:** Have you worked that  
[12]out?  
[13]**MR. GIULIANI:** We have.  
[14]**THE COURT:** You are going to  
[15]just request leave to reopen and we'll bring  
[16]the jury out. I'll ask the question I have  
[17]and you can move in the exhibit in front of  
[18]the jury and rest.  
[19]Can we make sure we have the  
[20]right name for the acquittal, the other one  
[21]said nothing was requested of her. I want to  
[22]make sure we get the right one.  
[23]**MR. GIULIANI:** The complainants  
[24]would be Christina Khem and Furtari Yun.  
**THE COURT:** I want to make sure

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[1] the ruling was on the correct one. Was that  
[2] Dina?  
[3] **MR. GIULIANI:** Yes.  
[4] **MS. BARALDI:** Yes, Your Honor.  
[5] **THE COURT:** All right.  
[6] Mr. In is here with his  
[7] attorney, Mr. Giuliani and Ms. Baraldi for the  
[8] Commonwealth.  
[9] Ms. Baraldi?  
[10] **MS. BARALDI:** Yes, Your Honor.  
[11] I would ask to reopen.  
[12] **THE COURT:** Very well. Let's  
[13] have the jury brought out.  
[14] **THE COURT CRIER:** Please remain  
[15] seated while the jury enters the courtroom.  
[16] - - -  
[17] (Jury enters the courtroom at  
[18] 10:26 a.m.)  
[19] - - -  
[20] (Whereupon, previously sworn  
[21] witness enters the courtroom and is seated.)  
[22] - - -  
[23] **THE COURT:** Good morning.  
[24] You may be seated.

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[1] **THE COURT:** The Commonwealth  
[2] having rested, Mr. Giuliani?  
[3] **MR. GIULIANI:** Thank you, sir.  
[4] The Defense would call Police Officer Felicia  
[5] Battles.  
[6] **THE COURT CRIER:** Please state  
[7] your name, spell your last name, badge number  
[8] and assignment for the record.  
[9] **THE WITNESS:** My name is Officer  
[10] Battles, B-A-T-T-L-E-S, first name,  
[11] F-E-L-I-C-I-A, Badge No. 7047, 4th District.  
[12] POLICE OFFICER FELICIA BATTLES,  
[13] after having been first duly sworn, was  
[14] examined and testified as follows:  
[15] **THE COURT:** Sir, you may  
[16] proceed.  
[17] **MR. Giuliani:** Thank you, Your  
[18] Honor.  
[19] - - -  
[20] DIRECT EXAMINATION  
[21] - - -  
[22] **BY MR. Giuliani:**  
[23] **Q.** Good morning, Officer Battles.  
[24] **A.** Good morning.

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[1] Mr. Levin, would you expect to  
[2] find DNA on a surface if the handler wore  
[3] latex gloves?  
[4] **THE WITNESS:** No, I would not.  
[5] **THE COURT:** Any question based  
[6] on my question?  
[7] **MR. GIULIANI:** No, Your Honor.  
[8] **MS. BARALDI:** No, Your Honor.  
[9] **THE COURT:** Thank you, sir. You  
[10] may be excused.  
[11] - - -  
[12] (Witness excused.)  
[13] - - -  
[14] **THE COURT:** You may continue.  
[15] **MS. BARALDI:** At this time the  
[16] Commonwealth would ask to move into evidence  
[17] all exhibits which has been previously marked  
[18] C-1 through C-29.  
[19] **THE COURT:** Any objection?  
[20] **MR. GIULIANI:** No, Your Honor.  
[21] **THE COURT:** They would be  
[22] received.  
[23] **MS. BARALDI:** At this time the  
[24] Commonwealth rests.

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[1] **Q.** On March 7th, 2007, were you a  
[2] Philadelphia Police Officer?  
[3] **A.** Yes.  
[4] **Q.** Where were you assigned?  
[5] **A.** I was assigned to RPC-46, radio patrol  
[6] car 46, covering the 4th District.  
[7] **Q.** And do you remember the shift you were  
[8] working on that particular day?  
[9] **A.** 12:00 to 8:00 shift.  
[10] **Q.** Midnight to 8:00 in the morning?  
[11] **A.** Midnight to 8:00 in the morning.  
[12] **Q.** You at some point received a radio call  
[13] while on patrol that morning?  
[14] **A.** That's correct.  
[15] **MR. GIULIANI:** With the Court's  
[16] permission I ask that this be marked as  
[17] Defense Exhibit 5.  
[18] **THE COURT:** It may be marked.  
[19] - - -  
[20] (9-1-1 transmissions marked  
[21] Defense Exhibit 5 for identification.)  
[22] - - -  
[23] **MR. GIULIANI:** Your Honor, there  
[24] has been a stipulation by and between myself

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[1] and Ms. Baraldi, that these are the 9-1-1  
[2] transmissions that were made in the early  
[3] morning hours of March 7th, 2007. These radio  
[4] transmissions were made in the ordinary course  
[5] of police business, and the transmissions as  
[6] heard on the CD are authentic and accurate.  
[7] **THE COURT:** So stipulated?  
[8] **MS. BARALDI:** Yes, Your Honor.  
[9] **MR. GIULIANI:** With the Court's  
[10] permission, may I approach?  
[11] **THE COURT:** You may.  
[12] **BY MR. Giuliani:**  
[13] **Q.** Officer Battles, you will see there's a  
[14] compact disk player. Prior to your testimony  
[15] this morning, have you had the opportunity to  
[16] listen to some of these transmissions?  
[17] **A.** Yes, I have.  
[18] **Q.** And as you have listened to them did you  
[19] recognized your voice on some of them?  
[20] **A.** Yes.  
[21] **Q.** You went to the location at 720 Mifflin  
[22] Street, right?  
[23] **A.** Yes.  
[24] **Q.** And I want to jump ahead. There are two

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[1] before, Officer Battles?  
[2] **A.** Not that part, not that I can remember.  
[3] **Q.** Now, you learned that two of the young  
[4] ladies in the house are named Christina Khem  
[5] and Dina Khem, you know that today?  
[6] **A.** Yes.  
[7] **Q.** As you are out there, you don't receive  
[8] that call, you are not hearing the call made  
[9] from the person inside of the house?  
[10] **A.** No.  
[11] **Q.** Who are you in transmission with or  
[12] contact with?  
[13] **A.** Police radio.  
[14] **Q.** I am going to play the next one,  
[15] Officer, and see if you recognize this.  
[16] - - -  
[17] (Audio recording played.)  
[18] - - -  
[19] **BY MR. GIULIANI:**  
[20] **Q.** Now, you heard that transmission,  
[21] correct?  
[22] **A.** Yes.  
[23] **Q.** There was a voice on there that said  
[24] 4-6?

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[1] young women who testified here the other day  
[2] and you were present, correct?  
[3] **A.** Yes.  
[4] **Q.** You've gotten to know those two young  
[5] ladies?  
[6] **A.** Yes.  
[7] **Q.** Tell the members of the jury who are  
[8] they?  
[9] **A.** I don't know their names, per se.  
[10] **Q.** Okay.  
[11] But you recognize them as the two young  
[12] ladies in that house that morning?  
[13] **A.** Yes, two of them.  
[14] **MR. GIULIANI:** Your Honor, may I  
[15] approach again?  
[16] **THE COURT:** Yes.  
[17] **BY MR. Giuliani:**  
[18] **Q.** Officer, I am going to play this first  
[19] tape and make sure it's loud enough.  
[20] - - -  
[21] (Audio recording played.)  
[22] - - -  
[23] **BY MR. Giuliani:**  
[24] **Q.** Now, have you heard that transmission

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[1] **A.** Yes.  
[2] **Q.** Who is that voice?  
[3] **A.** My voice.  
[4] **Q.** Okay.  
[5] Now, you identified yourself as 4-6,  
[6] tell the members of the jury why that is?  
[7] **A.** I was working assigned as 4-6 car.  
[8] **Q.** That's the number of your police  
[9] cruiser?  
[10] **A.** That's correct.  
[11] **Q.** So it's fair to say it's police  
[12] procedure you don't identify yourself by name  
[13] or badge number, you usually identify yourself  
[14] by car?  
[15] **A.** Exactly.  
[16] **Q.** Did you also hear the other two numbers  
[17] 4-3?  
[18] **A.** Yes.  
[19] **Q.** Do you know who 4-3 is?  
[20] **A.** Officer Robinson.  
[21] **Q.** And how about 4-8?  
[22] **A.** Officer Nolan.  
[23] **MR. GIULIANI:** Your Honor, may  
[24] this be marked as Defense Exhibit 6, please?

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[1] THE COURT: Yes.  
[2] ---  
[3] (Transcript marked Defense  
[4] Exhibit 6 for identification.)  
[5] ---  
[6] BY MR. GIULIANI:  
[7] Q. Officer Battles, what I am showing you  
[8] is marked D-6, it's a transcript of those  
[9] tapes or conversations we are about to hear.  
[10] You just heard two separate ones, would you  
[11] agree with me?  
[12] A. Yes.  
[13] Q. Now, the one that began, which you were  
[14] on identifying yourself as 4-6, starting at  
[15] Page 1 going to Page 2. Again, what time did  
[16] that transmission go out to you in your patrol  
[17] car?  
[18] A. Approximately 5:15, 5:20.  
[19] Q. Why don't you look at D-6, it tells you  
[20] the exact times.  
[21] A. 5:14 a.m.  
[22] MR. GIULIANI: May I approach?  
[23] THE COURT: Yes.  
[24] BY MR. GIULIANI:

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[1] ---  
[2] MR. GIULIANI: There's been a  
[3] stipulation by and between counsel as follows:  
[4] There are going to be  
[5] transmissions, officers identify themselves on  
[6] these transmissions by numbers. The names and  
[7] corresponding numbers for those officers on  
[8] this tape are on the board and counsel agreed  
[9] they are who they are.  
[10] With counsel's permission, I  
[11] would like to open it so the jury can see.  
[12] THE COURT: So stipulated?  
[13] MS. BARALDI: Yes.  
[14] MR. GIULIANI: Thank you.  
[15] ---  
[16] (Audio recording played.)  
[17] ---  
[18] BY MR. Giuliani:  
[19] Q. I am going to stop it right there,  
[20] Officer. Would you agree with me these  
[21] transmissions the jury just heard happened  
[22] after you and your fellow officers went into  
[23] the house of 720 Mifflin?  
[24] A. Yes.

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[1] Q. Let me show you the bottom transcript  
[2] right here and flip over to Page 2. Do you  
[3] see the transcript of where you responded?  
[4] A. At the top.  
[5] Q. Yes, ma'am.  
[6] A. Yes.  
[7] Q. And that transmission that we just heard  
[8] starts at 5:15:22 a.m., right?  
[9] A. Okay.  
[10] Q. Now, I am going to play the next one in  
[11] line, tell the members of the jury the next  
[12] set of transmissions, what time it begins?  
[13] A. 5:22:27.  
[14] Q. So seven minutes after the first  
[15] transmission where you are told there's a  
[16] robbery in progress and you respond and  
[17] Officer Robinson responds and Nolan responds  
[18] is the next set, right?  
[19] A. Okay.  
[20] MR. GIULIANI: Court's  
[21] indulgence, please.  
[22] THE COURT: Yes.  
[23] ---  
[24] (Short pause.)

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[1] Q. Okay.  
[2] And that's seven minutes after you first  
[3] got the call, correct?  
[4] A. From here, yes.  
[5] Q. Okay.  
[6] Now, the jury just heard someone say,  
[7] "4-6, be advised I discharged." Did you hear  
[8] that?  
[9] A. Yes.  
[10] Q. And do you see that on the transcript in  
[11] front of you?  
[12] A. Yes.  
[13] Q. Who is 4-6?  
[14] A. Mine.  
[15] Q. And you are telling the radio that you  
[16] fired the weapon?  
[17] A. That's correct.  
[18] Q. Let's continue.  
[19] ---  
[20] (Audio recording played.)  
[21] ---  
[22] BY MR. GIULIANI:  
[23] Q. Okay.  
[24] That was you just on there?



[1] **A.** That's correct.  
[2] **Q.** Let's stop here for a second. Tell the  
[3] members of the jury what happened when you  
[4] went in that house?  
[5] **A.** From what point?  
[6] **Q.** When you first entered with Officer  
[7] Nolan and Robinson, what did you see?  
[8] **A.** When we went in the house, when we first  
[9] entered into the house?  
[10] **Q.** Yes, ma'am.  
[11] **A.** Okay. I saw a female sitting on the  
[12] couch and I asked her who's in the house.  
[13] **Q.** Could you tell the members of the jury  
[14] is this an older person or younger person?  
[15] **A.** A younger person.  
[16] **Q.** Could you tell their race?  
[17] **A.** Asian, yes.  
[18] **Q.** Go ahead.  
[19] **A.** I'm sorry. And I thought I saw another  
[20] child sitting or laying I'm not sure on the  
[21] couch. Officer Nolan ran up the steps. First  
[22] I asked what happened? Who is in the house?  
[23] Who's in the house? They were sitting there  
[24] with a blank stare and it appeared like

[1] And then you said you and Robinson went  
[2] towards the back of the house?  
[3] **A.** That's correct.  
[4] **Q.** To get to the back of the house, is  
[5] there a kitchen you had to run through?  
[6] **A.** Yes.  
[7] **Q.** Okay.  
[8] And you noticed there was a basement  
[9] door?  
[10] **A.** No, we didn't notice the basement door  
[11] at that time. I didn't know where the  
[12] basement was at that time. All I know is my  
[13] partner was running towards the back and he  
[14] went through what appeared to be the backyard  
[15] at this point because I'm right behind him.  
[16] **Q.** Tell the members of the jury about this  
[17] male that came out of the basement area. I  
[18] want to make sure we get this correct.  
[19] **A.** At that point I thought he came out of  
[20] the basement, I'm not sure which way he came.  
[21] **Q.** Can you describe this male that you saw?  
[22] **A.** Well, at this point he was tall, about 6  
[23] foot. He looked like he wore -- he had a  
[24] white handkerchief, like a bandana, tied

[1] something was wrong. And I said: Police, is  
[2] anybody upstairs? Anybody in the basement?  
[3] And we heard a noise coming from  
[4] upstairs, "I'm alright." And it didn't appear  
[5] to be an Asian male and I advised my partners  
[6] it sounds like a black person, something  
[7] doesn't sound right.  
[8] So as we entered into the house we heard  
[9] noise. Officer Nolan ran upstairs and Officer  
[10] Robinson ran towards the back. At which point  
[11] I was stuck because I didn't know which way to  
[12] run because the radio call came out the  
[13] person's in the basement. So my mind told me  
[14] to run towards Robinson. I heard glass  
[15] breaking upstairs so I ran towards the  
[16] backyard with Officer Robinson. And then it  
[17] appeared that a male came out of the basement,  
[18] but I'm not sure at this point which way he  
[19] came from because everything happened so fast.  
[20] **Q.** Let's talk about that.  
[21] **A.** Okay.  
[22] **Q.** You know that Nolan went upstairs?  
[23] **A.** That's correct, we heard glass breaking.  
[24] **Q.** Okay.

[1] around his neck with the point coming here.  
[2] He had white latex gloves on.  
[3] He was medium brown skin and he had a  
[4] green hoody on. I thought it was at that  
[5] point I didn't know what color at that point,  
[6] it was green, orange, red. I was just so  
[7] worried about the officer's safety that's in  
[8] the backyard. But all I know is he ran past  
[9] me, and he ran past the officer. Where he  
[10] came from I thought it could have been the  
[11] basement, I wasn't sure at this point.  
[12] **Q.** Where did he run to?  
[13] **A.** He ran -- when we got -- Officer  
[14] Robinson got out in the backyard first. When  
[15] you look to your left and you look to your  
[16] right, there's an alley, there's a window.  
[17] When you come out of the backyard, you look to  
[18] your left there's like a little alleyway and  
[19] the house and it's a window, he ran that way.  
[20] We heard a window break from upstairs.  
[21] So when you turn to your left there's a shed  
[22] and it's like an old cement outhouse. And  
[23] there's a metal fence that goes way up say  
[24] about 12 feet or less. And Officer Robinson

[1] was standing in my peripheral vision towards  
[2] the right of me. So I would do like this and  
[3] his gun was drawn and we heard noise coming  
[4] from the shed. So we were hollering with our  
[5] guns drawn, come out with your hands up; come  
[6] out of the shed. So we assumed that he was in  
[7] the shed because there was nowhere else to run  
[8] and there's no way he could have jumped that  
[9] fence that quick.

[10] **Q.** Okay.

[11] And the person that went to the shed is  
[12] that the male that ran past you?

[13] **A.** Yes.

[14] **Q.** And you think he came out of the  
[15] basement?

[16] **A.** I think he did, I wasn't sure.

[17] **Q.** Fair enough. Let's continue with this  
[18] transmission.

[19] - - -

[20] (Audio recording played.)

[21] - - -

[22] **BY MR. GIULIANI:**

[23] **Q.** Officer, let me stop the tape right  
[24] there. Do you recognize the voice who is on

[1] transmission?

[2] **A.** Yes.

[3] **Q.** That was you?

[4] **A.** That's correct.

[5] **Q.** Do you remember making that  
[6] transmission?

[7] **A.** Yes, I do.

[8] **Q.** Where were you when you were making that  
[9] transmission, still in the home?

[10] **A.** Still in the home with the children  
[11] because I didn't want to leave them knowing we  
[12] didn't locate the third male.

[13] **Q.** Now, at that point in time where were  
[14] Officers Nolan and Robinson?

[15] **A.** I have no idea. I was in the house with  
[16] the children by myself.

[17] **Q.** They were no longer in the home?

[18] **A.** Not at that point, no.

[19] **Q.** And is it fair to say until other backup  
[20] officers arrived and entered the home you  
[21] stayed inside of the home?

[22] **A.** That's correct.

[23] **Q.** Okay.

[24] Let's continue.

[1] that transmission right there? If you know,  
[2] if you don't know.

[3] **A.** Not really.

[4] - - -

[5] (Audio recording played.)

[6] - - -

[7] **BY MR. GIULIANI:**

[8] **Q.** Let me pause it again right there.  
[9] Officer Battles, did you hear a voice say:  
[10] 4-6, be advised, they all have guns.

[11] **A.** Yes.

[12] **Q.** Is that your voice?

[13] **A.** Yes.

[14] **Q.** Tell the members of the jury what  
[15] information did you have that all three males  
[16] inside the house had guns?

[17] **A.** One of the children in the house said  
[18] they all three had guns.

[19] **Q.** Let's continue.

[20] - - -

[21] (Audio recording played.)

[22] - - -

[23] **BY MR. GIULIANI:**

[24] **Q.** Officer Battles, did you hear that last

[1] - - -

[2] (Audio recording played.)

[3] - - -

[4] **BY MR. GIULIANI:**

[5] **Q.** Did you hear that transmission: 4-6, be  
[6] advised, two black, white.

[7] **A.** That's correct.

[8] **Q.** That was you?

[9] **A.** I made that statement.

[10] **Q.** Where did you get that information from?

[11] **A.** From the children in the house.

[12] **Q.** Okay.

[13] **A.** At this time it was three girls and one  
[14] male child.

[15] **Q.** Okay.

[16] And just so the jury is clear, you saw  
[17] one of these males inside of the house and  
[18] that's the person you shot at?

[19] **A.** That's correct.

[20] **Q.** You didn't see either of the other two?

[21] **A.** No.

[22] **Q.** Let's continue.

[23] - - -

[24] (Audio recording played.)

[1] ---  
[2] **BY MR. GIULIANI:**  
[3] **Q.** Again, that was you.  
[4] **A.** That's correct.  
[5] **Q.** One had light-colored jeans and a navy  
[6] blue zip-up sweats?  
[7] **A.** That's correct.  
[8] **Q.** And you're getting information from  
[9] people inside of the home?  
[10] **A.** Exactly.  
[11] **Q.** Not just inside of the house, but  
[12] outside of the house in the street there was  
[13] chaos, there was a lot of activity.  
[14] **MS. BARALDI:** I object. It  
[15] calls for speculation.  
[16] **MR. GIULIANI:** I'll rephrase.  
[17] **BY MR. GIULIANI:**  
[18] **Q.** This happened quickly.  
[19] **A.** Yes.  
[20] **Q.** The whole event happened quickly and  
[21] fast?  
[22] **A.** Yes.  
[23] **Q.** And you're getting information from  
[24] people inside of the home?

[1] seconds, I really can't. Not at this time  
[2] anyway.  
[3] **Q.** Let me ask you this: Did you eventually  
[4] or at any point in time go into the basement?  
[5] **A.** We never made it into the basement, not  
[6] at all.  
[7] **Q.** Did you see the father come out of the  
[8] basement?  
[9] **A.** Yes.  
[10] **Q.** You did?  
[11] **A.** Yes.  
[12] **Q.** When he came out of the basement was he  
[13] by himself?  
[14] **A.** The second -- yes.  
[15] **Q.** Did you notice anything strange about  
[16] him?  
[17] **A.** Yes, he had a cord like a long  
[18] shoestring. And it was wrapped from around  
[19] his ankles all the way up to his knees. And  
[20] it was like a bright pumpkin red or orange,  
[21] like the color of pumpkin. It was wrapped  
[22] around his legs, his arms were bounded and  
[23] there was something in his mouth.  
[24] **Q.** Now, you were getting information from

[1] **A.** Only from the two females at this point.  
[2] **Q.** Okay.  
[3] They are obviously excited about what  
[4] happened?  
[5] **A.** Yes.  
[6] **Q.** Okay.  
[7] Did you ever see a man named Vuthary  
[8] Yun?  
[9] **A.** That would be the father, yes.  
[10] **Q.** And where did you see him?  
[11] **A.** Maybe in the timing about maybe a good  
[12] three minutes, four minutes, I'm not sure.  
[13] **Q.** You said --  
[14] **A.** I'm not sure because I wasn't timing  
[15] anything at the time.  
[16] **Q.** You say a good three or four minutes  
[17] after what? After you entered? After the  
[18] discharge? After the officers left the house?  
[19] **A.** Oh no, you are talking about after I  
[20] entered, after the officers left the house.  
[21] **Q.** I am asking you.  
[22] **A.** When the officers returned back to the  
[23] house I would say a good maybe five, I'm not  
[24] sure. I really can't put the minutes or

[1] the two girls at this point, right?  
[2] **A.** At this point it wasn't the two girls  
[3] that I seen, it was the child, the baby  
[4] female.  
[5] **Q.** Okay.  
[6] **A.** Is the information I got this from.  
[7] **Q.** Okay.  
[8] Let's continue.  
[9] ---  
[10] (Audio recording played.)  
[11] ---  
[12] **BY MR. GIULIANI:**  
[13] **Q.** Officer Battles, that's you, right?  
[14] **A.** Yes.  
[15] **Q.** And that's your badge number?  
[16] **A.** Yes.  
[17] **Q.** Let's talk about this briefly. Are  
[18] there special procedures that occur when a  
[19] Philadelphia police officer discharges his or  
[20] her weapon?  
[21] **A.** Yes.  
[22] **Q.** Tell the members of the jury what they  
[23] are?  
[24] **A.** We are not to make a statement to anyone



[1] and we have to wait until a supervisor comes  
[2] on location. And we pass our weapon to the  
[3] supervisor and at that point we make the  
[4] statement to the supervisor. How many times  
[5] it was discharged and about where did you  
[6] discharge.

[7] **Q.** Okay.

[8] And you did that in this case?

[9] **A.** That's correct.

[10] **Q.** Who is the supervisor that came to  
[11] location?

[12] **A.** Sergeant Woods.

[13] **Q.** And did you give him your firearm?

[14] **A.** Yes, I did.

[15] **Q.** Let's continue.

[16] - - -

[17] (Audio recording played.)

[18] - - -

[19] **BY MR. GIULIANI:**

[20] **Q.** Officer Battles, did you at any point in  
[21] time make a statement afterwards that day  
[22] about what happened? After what we heard on  
[23] the tape about the discharge of the weapon.

[24] **A.** Only to my sergeant.

[1] **Q.** No indication you did anything wrong,  
[2] but you have to talk to them.

[3] **A.** Yes.

[4] **Q.** It's part of your duties as a police  
[5] officer. Would you go to Page 2, please.

[6] **A.** Okay.

[7] **Q.** And do you see the question there:  
[8] "Tell me all that you know about this  
[9] incident."

[10] Do you see that?

[11] **A.** Yes.

[12] **Q.** I want you to go down to paragraph two  
[13] and begin reading there.

[14] **A.** "I was continuously yelling 'police' and  
[15] asking if everything was okay. It sound like  
[16] a black male's voice shouted down from  
[17] upstairs that everything was okay. I looked  
[18] back and I told the other officers that the  
[19] voice didn't sound like an Asian individual,  
[20] that it sounded like a black male.

[21] "At that point an Asian female came  
[22] running downstairs at a high rate of speed  
[23] stating 'there are two males upstairs, they  
[24] got guns.' At the same time another Asian

[1] **Q.** Okay.

[2] **MR. Giuliani:** Your Honor, I'd  
[3] ask that this be marked as D-7, please.

[4] - - -

[5] (Statement marked Defense  
[6] Exhibit 7 for identification.)

[7] - - -

[8] **BY MR. GIULIANI:**

[9] **Q.** Officer Battles, I am showing you what's  
[10] been marked Defense Exhibit 7. Take a look at  
[11] that and let me know when you had a chance to  
[12] look at it and know what it is.

[13] **A.** Yes, I know what this is.

[14] **Q.** You've seen that before, right, Officer?

[15] **A.** Yes.

[16] **Q.** Tell the members of the jury what D-7  
[17] is?

[18] **A.** D-7 is the statement I made to Internal  
[19] Affairs in August, 8/24/07.

[20] **Q.** Now, before the jury gets the wrong  
[21] idea, isn't it a fact because of the discharge  
[22] of the weapon you're required to make a  
[23] statement?

[24] **A.** That's correct.

[1] female came running from the kitchen area and  
[2] she said that there was a male downstairs in  
[3] the basement. And she said they all got guns;  
[4] my father's down in the basement. Then I  
[5] asked who else was there? And she said that  
[6] the male with the gun was still down there.  
[7] She said there were three black males and they  
[8] all had guns. Officer Nolan heard a noise and  
[9] he ran upstairs."

[10] **Q.** Let me stop you right there. You're  
[11] telling the IAD officer on that date and time  
[12] that when you came in an Asian female came  
[13] running from the kitchen area.

[14] **A.** That's exactly what I said.

[15] **Q.** That's different from the young Asian  
[16] female who came downstairs, correct?

[17] **A.** Different.

[18] **Q.** And this Asian female specifically told  
[19] you that there was a male downstairs in the  
[20] basement with a gun?

[21] **A.** Yes, that's what I believe she said.

[22] **Q.** And her father was down there, too?

[23] **A.** That's correct.

[24] **Q.** Please continue to the next paragraph.

[1] The bottom paragraph on Page 2.  
[2] **A.** "We see this male come out from the area  
[3] where the Asian female came from, the kitchen  
[4] area. There was a black male about 6'4",  
[5] husky build, 290 pounds wearing an orange  
[6] hoody. And he had a white handkerchief over  
[7] his face and latex gloves on his hands. He  
[8] runs out of the back door and I was going  
[9] towards the back door. Officer Robinson runs  
[10] out of the back door and then I ran out after  
[11] Robinson. We didn't see the male at first the  
[12] light" -- wait a minute.  
[13] "We didn't see the male at first. The  
[14] light was dim there when we ran out of the  
[15] back door. Robinson was to my right about 5  
[16] feet away, there was a shed to the left in the  
[17] yard. We knew that he had to be in the shed  
[18] because there didn't seem to be a way to get  
[19] out of the yard."  
[20] **Q.** Let me stop you there, Officer. You  
[21] were telling the Internal Affairs investigator  
[22] what you remember to the best of your  
[23] knowledge?  
[24] **A.** Five months later, yes.

[1] **Q.** Officer Battles, prior to March 7th,  
[2] 2007, how long had you been a police officer?  
[3] **A.** Seven years and a few months.  
[4] **Q.** In that seven years, had you ever  
[5] discharged your weapon?  
[6] **A.** Never.  
[7] **Q.** Is this the first time you've ever  
[8] discharged it?  
[9] **A.** Yes.  
[10] **Q.** Is this the only time to date you've  
[11] discharged your weapon; is that fair to say?  
[12] **A.** Yes, ma'am.  
[13] **Q.** You receive a radio call and I'll quote  
[14] **here:** "Somebody breaking in. There's no  
[15] flash."  
[16] **A.** Yes.  
[17] **Q.** And we know that because we heard it on  
[18] the radio tape?  
[19] **A.** Yes.  
[20] **Q.** So you don't have any other information  
[21] other than somebody breaking in; is that  
[22] correct?  
[23] **A.** Yes.  
[24] **Q.** So when you arrive on location, you

[1] **Q.** And you'll agree with me in your  
[2] statement you tell them that the male that  
[3] ends up in the backyard, who you eventually  
[4] discharged your weapon on, came out of the  
[5] kitchen area?  
[6] **A.** At that point I believed he came from  
[7] the kitchen area.  
[8] **Q.** Fair enough.  
[9] **A.** I wasn't sure. I told them I wasn't  
[10] sure.  
[11] **Q.** Okay.  
[12] **A.** Because it happened so fast.  
[13] **Q.** Fair enough, Officer.  
[14] **MR. GIULIANI:** That's all I  
[15] have. Thank you very much.  
[16] **MS. BARALDI:** May I?  
[17] **THE COURT:** Yes.  
[18] **MS. BARALDI:** Thank you.  
[19] ---  
[20] CROSS-EXAMINATION  
[21] ---  
[22] **BY MS. BARALDI:**  
[23] **Q.** Good morning, Officer.  
[24] **A.** Good morning.

[1] arrive on location with Officer Robinson and  
[2] Nolan, correct?  
[3] **A.** Yes.  
[4] **Q.** You actually go in first, not the two  
[5] guys, correct?  
[6] **A.** Yes.  
[7] **Q.** So they send you in first?  
[8] **A.** They are right behind me.  
[9] **Q.** You walk in and see an Asian child  
[10] sitting on the couch?  
[11] **A.** Yes.  
[12] **Q.** This is not the two girls that have been  
[13] here to testify, this is a younger child?  
[14] **A.** That's correct.  
[15] **Q.** You walk in and you say "Police."  
[16] **A.** Yes.  
[17] **Q.** You hear something coming from upstairs,  
[18] you recognize that voice as not the voice of  
[19] an Asian man.  
[20] **A.** That's correct.  
[21] **Q.** As a result of that, Officer Nolan goes  
[22] running upstairs or Christina Khem comes  
[23] running downstairs first?  
[24] **A.** Christina Khem coming running downstairs

[1] first.  
[2] **Q. She says:** "Help me, help me."  
[3] **A.** That's correct.  
[4] **Q.** Officer Nolan goes upstairs?  
[5] **A.** Yes.  
[6] **Q.** Officer Robinson takes off to the back?  
[7] **A.** That's correct.  
[8] **Q.** You make a split second decision you're  
[9] going with Robinson.  
[10] **A.** Yes.  
[11] **Q.** Reason being no one is going upstairs,  
[12] the only way they came get out is out of the  
[13] window; fair to say?  
[14] **A.** Yes.  
[15] **Q.** At this point you don't know anything  
[16] about the basement?  
[17] **A.** No.  
[18] **Q.** Because the radio call you received at  
[19] this point is just somebody breaking in,  
[20] that's all radio told you. And we know that  
[21] because we listened to the tape. Okay?  
[22] **A.** Okay.  
[23] **Q.** So is it fair to say the only thing you  
[24] know at this point is somebody breaking in,

[1] **A.** Yes.  
[2] **Q.** The stairs are to your left, no one goes  
[3] running up the steps, you are headed towards  
[4] the back?  
[5] **A.** Right.  
[6] **Q.** Now, in the kitchen there's a door to  
[7] your right, fair to say, to get out of that  
[8] back alleyway?  
[9] **A.** That's correct.  
[10] **Q.** Robinson's in front of you?  
[11] **A.** That's correct.  
[12] **Q.** In your mind do you see Robinson opening  
[13] that door?  
[14] **A.** Yes.  
[15] **Q.** Okay.  
[16] At this point you haven't seen any other  
[17] people in this house, but that Asian female,  
[18] other than police, that second?  
[19] **A.** At that second.  
[20] **Q.** Okay.  
[21] Robinson goes out the back, right,  
[22] you're right behind him?  
[23] **A.** That's correct.  
[24] **Q.** Now, you get out in the back and then

[1] there's no flash, female complainant,  
[2] someone's in the house, she's in the basement.  
[3] **A.** That's correct.  
[4] **Q.** That's all you know.  
[5] **A.** That's correct, yeah.  
[6] **Q.** So you are not looking for a basement  
[7] door and following your partner out back?  
[8] **A.** Yes.  
[9] **Q.** At some point in time Robinson goes  
[10] through and in this house behind the living  
[11] room is a kitchen; is that fair to say?  
[12] **A.** That's correct.  
[13] **Q.** And when you walk in the couch is facing  
[14] the front door?  
[15] **A.** Yes.  
[16] **Q.** So when you walk in that's how you see  
[17] the Asian female sitting right there, the  
[18] little girl?  
[19] **A.** Yes.  
[20] **Q.** If I told you her name, would that help?  
[21] **A.** Maybe.  
[22] **Q.** Angela?  
[23] **A.** (No audible response.)  
[24] **Q.** We'll go by the youngest Asian daughter.

[1] you realize you hear something in the shed;  
[2] fair to say?  
[3] **A.** Yes.  
[4] **Q.** Okay.  
[5] Do you see anybody running past Robinson  
[6] outside in the alley?  
[7] **A.** Yes.  
[8] **Q.** So the first time you see anyone that's  
[9] not the Asian female or not one of your  
[10] brother's in blue is outside in that alley; is  
[11] that fair to say?  
[12] **A.** Yes.  
[13] **Q.** So you don't see anybody inside of the  
[14] house, did you?  
[15] **A.** It happened so fast, no. Not really,  
[16] no.  
[17] **Q.** As we are going through it now, though,  
[18] you realize you are following Robinson out and  
[19] the first person you see is already outside?  
[20] **A.** That's correct, because there's a big  
[21] window.  
[22] **Q.** There's a kitchen window?  
[23] **A.** Yes.  
[24] **Q.** So you see him through that window and

[1] he's actually already outside?  
[2] **A.** Yes.  
[3] **Q.** And the only place he could have come  
[4] from is where?  
[5] **A.** When you turn to your right there's --  
[6] like, picture this being my right. From here  
[7] -- from that line that wood line right there.  
[8] **Q.** Right here?  
[9] **A.** Yes. If that's my right, the wood line  
[10] would be the house and it would be a window.  
[11] **Q.** Okay.  
[12] So when I'm walking out the back door --  
[13] **A.** Like, the second floor window.  
[14] **Q.** You are following Robinson out, that  
[15] window is to the right in the kitchen. It has  
[16] the bars on it that the ladies and gentlemen  
[17] already seen.  
[18] **A.** Right.  
[19] **Q.** If looking to your right, that's the  
[20] house right there, correct?  
[21] **A.** Right.  
[22] **Q.** The only place he could have come from  
[23] is that second story window; is that fair to  
[24] say?

[1] "Police"?  
[2] **A.** Yes.  
[3] **Q.** And you don't know what he's got in his  
[4] hands?  
[5] **A.** I don't know.  
[6] **Q.** Now, this is all taking place between  
[7] the radio call at 5:15 and the next time we  
[8] hear from you, you already discharged that's  
[9] not until 5:22?  
[10] **A.** That's correct.  
[11] **Q.** That's a seven-minute period of time.  
[12] **A.** That's correct.  
[13] **Q.** So there's a point in time when you and  
[14] Robinson are outside?  
[15] **A.** Correct.  
[16] **Q.** And no one is on the second floor?  
[17] **A.** Yes.  
[18] **Q.** There's no police on the first floor of  
[19] the house?  
[20] **A.** No. And I'm worried about Nolan  
[21] upstairs.  
[22] **Q.** So you are out back and in about 20  
[23] seconds you're screaming for this guy to get  
[24] out of the shed.

[1] **A.** That's fair to say.  
[2] **Q.** So you could have seen him through that  
[3] window still while inside of the house?  
[4] **A.** Right.  
[5] **Q.** But you couldn't have seen him inside  
[6] the house?  
[7] **A.** No. Thinking about it, no.  
[8] **Q.** And it's clear in your head you remember  
[9] that white handkerchief.  
[10] **A.** I surely do. It jumped at me  
[11] distinctively.  
[12] **Q.** So you are following him into the yard?  
[13] **A.** Right.  
[14] **Q.** By the time you go outside you don't see  
[15] him in the yard; fair to say?  
[16] **A.** Yes.  
[17] **Q.** You hear noises coming from the shed,  
[18] correct?  
[19] **A.** Yes.  
[20] **Q.** When he's in the shed how long are you  
[21] standing in the backyard with your gun drawn  
[22] with Officer Robinson?  
[23] **A.** Twenty seconds or less.  
[24] **Q.** And the whole time you're screaming

[1] **A.** That's correct.  
[2] **Q.** He gets out of the shed. What happens  
[3] right that second? What do you see?  
[4] **A.** When he comes out of the shed we are  
[5] hollering at him, get on the ground, get on  
[6] the ground. He steps one foot out and he  
[7] hesitates and you can't see his right arm, but  
[8] you can see his left arm. Let's see. He's  
[9] facing me. So you could see one arm come out  
[10] and we are hollering, come out, get on the  
[11] ground. And at that split point he turns and  
[12] it seems like he's going to comply, but at  
[13] that split point he turns and grabs the arm  
[14] rail and he reaches his other foot out. As  
[15] he's getting ready to pull out it seems like I  
[16] see something silver, that's when I discharge.  
[17] But at the same point he jumps over the rail,  
[18] jumps over and over.  
[19] **Q.** Okay.  
[20] **A.** And that's what happens after. You  
[21] know, at the same point I'm discharging. I  
[22] don't know if he's coming out with something  
[23] on me or my partner.  
[24] **Q.** And you find out later he's not struck?



[1] **A.** Yes.  
[2] **Q.** You discharge once and put the gun down,  
[3] right?  
[4] **A.** Yes.  
[5] **Q.** And he goes eastbound down the alley?  
[6] **A.** Yes.  
[7] **Q.** And because you discharged then, police  
[8] procedure you stay on the scene?  
[9] **A.** Right.  
[10] **Q.** Now at this point, if you can recall, he  
[11] goes over the fence, where's Nolan? Nolan was  
[12] in the backyard with you?  
[13] **A.** Right now, I don't remember that.  
[14] **Q.** Fair enough.  
[15] All of a sudden then Robinson -- when do  
[16] you first remember meeting back up with Nolan  
[17] or do you see Nolan again?  
[18] **A.** When we meet back up with Nolan is when  
[19] Robinson runs back in the house. I stopped  
[20] and turned around and started following  
[21] Robinson. Then I see Nolan downstairs and  
[22] then they started to run out the back door.  
[23] Because Robinson said he ran out the back, he  
[24] ran over the alley, he's going over radio. So

[1] **A.** Exactly.  
[2] **Q.** Because in your statement you said some  
[3] girl came running out of the basement area and  
[4] said to you that there's -- and I'm turning to  
[5] Page 2 of your statement.  
[6] "At the same time" -- paragraph 2. "At  
[7] the same time another Asian female came  
[8] running from the kitchen. She said there was  
[9] a male downstairs in the basement. They all  
[10] got guns, my father is down in the basement."  
[11] **A.** That's correct.  
[12] **Q.** Okay.  
[13] Is the Asian female that said that to  
[14] you the little girl on the couch?  
[15] **A.** No.  
[16] **Q.** The girl Dina from the basement, is it  
[17] the older daughter that says that to you?  
[18] Think back.  
[19] **A.** The older daughter. She was the older  
[20] daughter because the one next to the oldest  
[21] was the one that was upstairs if I can vaguely  
[22] recall. I am almost sure about it.  
[23] **Q.** But at this point you're there with  
[24] Christina already?

[1] now they are running out the back door  
[2] together, and I look back and I see the two  
[3] girls there. And I'm starting to run out with  
[4] them and then I stopped, because I got right  
[5] towards the front door and I was getting ready  
[6] to run and I said, ain't nobody here with the  
[7] children. So I backed up and went in the  
[8] house because I remembered there was a third  
[9] male and we never -- we didn't see where he  
[10] was, you know what I mean, where he came from.  
[11] **Q.** That third male could have been in the  
[12] closet the whole time, so it was a good thing  
[13] you did.  
[14] **A.** He could be somewhere in the house so I  
[15] stayed there with them.  
[16] **Q.** So at this point Mr. Yun, you realize,  
[17] because you remember the two girls there is  
[18] not out of the basement yet?  
[19] **A.** Right.  
[20] **Q.** In your mind's eye. And when we are  
[21] talking about the two girls, we are talking  
[22] about the girl that runs down the steps we  
[23] know is Christina yelling help me, help me,  
[24] and the little girl on the couch.

[1] **A.** Right.  
[2] **Q.** And with the little girl on the couch?  
[3] **A.** Right.  
[4] **Q.** When you first see Dina come up from the  
[5] basement?  
[6] **A.** Right.  
[7] **Q.** So it's after the discharge that you  
[8] first see Dina come up from the basement?  
[9] **A.** That's correct.  
[10] **Q.** And her father follows her up later on?  
[11] **A.** Yes.  
[12] **Q.** Now, if I could turn your attention to  
[13] the transcripts of the radio call that I am  
[14] not going to play for everybody because  
[15] everybody has heard it already.  
[16] You give a description -- turning to  
[17] Page 5, for the record, of the radio call.  
[18] About 10 lines down it says, "4-6" which is  
[19] you, correct?  
[20] **A.** Yes.  
[21] **Q.** "Be advised one had light-colored jeans  
[22] and navy blue zipped up sweats."  
[23] Now, the only man you had seen was the  
[24] man you discharged at Jerry Jean and he's



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[1] wearing a green sweatshirt, correct?  
[2] **A.** That's correct.  
[3] **Q.** Who gives you that information?  
[4] **A.** The younger daughter. The little girl  
[5] on the couch.  
[6] **Q.** The little girl on the couch, she tells  
[7] you about the navy blue zip-up sweat shirt?  
[8] **A.** Yes, I can remember. Because when I  
[9] usually ask anybody about a hoody, you have  
[10] two types of hoodies, you have one that you  
[11] can zip-up and you can put your hands in and  
[12] one that zip-up that -- you know, like, no  
[13] zipper at all, you know what I mean.  
[14] So I asked her, listen, make sure, is  
[15] there anything distinctive about the hoody?  
[16] She said it zips up. I said what about the  
[17] jeans was it light color or navy blue or dark.  
[18] She said it's like light blue, like acid wash  
[19] that's exactly her words. I went over the air  
[20] I said be advised he has a navy blue hoody on,  
[21] it zips up, so this way they know what type of  
[22] hoody it was, and a pair of light blue jeans.  
[23] **Q.** And that information came from the  
[24] little girl on the couch?

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[1] **Q.** Okay.  
[2] **MR. GIULIANI:** That's all I  
[3] have. Thank you very much.  
[4] **THE COURT:** Any redirect?  
[5] **MS. BARALDI:** No, Your Honor.  
[6] **THE COURT:** Officer, you may  
[7] step down.  
[8] ---  
[9] (Witness excused.)  
[10] ---  
[11] **THE COURT:** May I see counsel  
[12] for a moment?  
[13] Perhaps we should give the jury  
[14] a short recess and I'll see you here in open  
[15] court.  
[16] **MS. BARALDI:** Okay.  
[17] **THE COURT CRIER:** Please remain  
[18] seated while the jury exits the courtroom.  
[19] ---  
[20] (Jury departs the courtroom at  
[21] 11:20 a.m.)  
[22] ---  
[23] **THE COURT:** Let the record  
[24] reflect the jurors have exited the courtroom.

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[1] **A.** That's exactly right.  
[2] **MS. BARALDI:** I don't have any  
[3] further questions.  
[4] **THE COURT:** Any redirect?  
[5] **MR. GIULIANI:** Briefly.  
[6] ---  
[7] REDIRECT EXAMINATION  
[8] ---  
[9] **BY MR. GIULIANI:**  
[10] **Q.** Officer Battles, I want to touch on  
[11] something you said. I had never discharged  
[12] your weapon before that day?  
[13] **A.** No.  
[14] **Q.** It was a very scary situation.  
[15] **A.** Yes, it was.  
[16] **Q.** Do you agree with me, your description  
[17] to Internal Affairs is different, five months  
[18] later is different than what you just  
[19] testified today?  
[20] **A.** That's correct.  
[21] **Q.** And that's part of the fact that it  
[22] happened that fast and that is frightening  
[23] even to you are a trained police officer?  
[24] **A.** That's correct.

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[1] Mr. Giuliani, who is your next  
[2] witness?  
[3] **MR. GIULIANI:** I intend to not  
[4] call any further witnesses. I will colloquy  
[5] my client about his Constitutional rights. I  
[6] intend to move into evidence my exhibits and I  
[7] am going to rest.  
[8] **THE COURT:** Very well.  
[9] Will you have any rebuttal,  
[10] Ms. Baraldi?  
[11] **MS. BARALDI:** No, Your Honor.  
[12] **THE COURT:** Okay. Give me one  
[13] second. All right.  
[14] Let the record reflect the  
[15] jurors have all left the courtroom.  
[16] Mr. Giuliani, I am going to  
[17] restate what I heard you say, that is that you  
[18] intend to mark and move your exhibits and  
[19] rest, correct, sir?  
[20] **MR. GIULIANI:** It is, Your  
[21] Honor.  
[22] **THE COURT:** And I heard you say  
[23] that your client will not be testifying.  
[24] **MR. GIULIANI:** That's correct.

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[1] THE COURT: Let's have Mr. In  
[2] sworn in.  
[3] THE COURT CRIER: Please state  
[4] for the record your name and spell your name  
[5] for the record.  
[6] THE DEFENDANT: John In, I-N.  
[7] ---  
[8] JOHN IN, after having been first  
[9] duly sworn, was examined and testified as  
[10] follows:  
[11] ---  
[12] THE COURT: You may be seated,  
[13] Counsel. Can we take up another matter that  
[14] will last up about five minutes?  
[15] ---  
[16] (Short recess in the matter of  
[17] Commonwealth v. John In.)  
[18] ---  
[19] THE COURT: We'll reconvene in  
[20] Commonwealth v. John In.  
[21] Mr. In, you have been sworn.  
[22] Tell me your full name, state your age and  
[23] give me your date of birth.  
[24] THE DEFENDANT: John In, I-N,

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[1] THE DEFENDANT: Yes, Your Honor.  
[2] THE COURT: Do you understand  
[3] that you are the defendant in this case and  
[4] for that reason you have rights?  
[5] THE DEFENDANT: Right.  
[6] THE COURT: You've seen that  
[7] play out. You are presumed to be innocent.  
[8] The Commonwealth is obliged to prove you  
[9] guilty beyond a reasonable doubt. Your  
[10] attorney has confronted the witnesses and you  
[11] have observed that the Constitutional rights  
[12] that are yours have been protected. Agreed?  
[13] THE DEFENDANT: Yes.  
[14] THE COURT: Now, we are at the  
[15] juncture where the Commonwealth has rested and  
[16] there's been a witness called for defense.  
[17] And I must advise you as to what your options  
[18] are. I do this knowing full well that you  
[19] have already had this discussion with  
[20] Mr. Giuliani and he has spoken to you in his  
[21] role as counsel. I am simply making a record.  
[22] Do you understand that?  
[23] THE DEFENDANT: Yes.  
[24] THE COURT: Every defendant in a

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[1] 8/5/83.  
[2] THE COURT: How old are you?  
[3] THE DEFENDANT: Twenty-five.  
[4] THE COURT: What's the highest  
[5] grade you completed in school, sir?  
[6] THE DEFENDANT: Graduated high  
[7] school.  
[8] THE COURT: So you read, write,  
[9] and understand English, correct?  
[10] THE DEFENDANT: Yes.  
[11] THE COURT: Where did you  
[12] graduate high school?  
[13] THE DEFENDANT: Olney High.  
[14] THE COURT: Have you been  
[15] diagnosed with and treated for mental illness  
[16] or disease?  
[17] THE DEFENDANT: No.  
[18] THE COURT: Are you under the  
[19] influence of drugs, alcohol, or medication?  
[20] THE DEFENDANT: No.  
[21] THE COURT: You heard your  
[22] attorney, Mr. Giuliani, tell me that you have  
[23] decided not to testify in this case; is that  
[24] correct?

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[1] criminal trial has an absolute right to  
[2] testify, he or she has a right to call  
[3] witnesses if the defendant elects to do so.  
[4] Do you understand?  
[5] THE DEFENDANT: Yes.  
[6] THE COURT: On the other hand,  
[7] every defendant in a criminal case has a  
[8] Constitutional right against self-  
[9] incrimination, you have a right of silence at  
[10] trial. Do you understand?  
[11] THE DEFENDANT: Yes.  
[12] THE COURT: You have no  
[13] obligation to testify and/or call witnesses  
[14] for that matter. Do you understand that?  
[15] THE DEFENDANT: Yes.  
[16] THE COURT: However, whether or  
[17] not you testify is a decision that you must  
[18] make. It is entirely up to you, it is not a  
[19] decision that Mr. Giuliani can make. Do you  
[20] understand that?  
[21] THE DEFENDANT: Yes.  
[22] THE COURT: Now, do you  
[23] understand what your rights are?  
[24] THE DEFENDANT: Yes.

[1] **THE COURT:** Do you understand  
[2] what your options are?  
[3] **THE DEFENDANT:** Yes.  
[4] **THE COURT:** Do you understand  
[5] that you can testify if you want to?  
[6] **THE DEFENDANT:** Yes.  
[7] **THE COURT:** Do you understand  
[8] that if you do not wish to testify you can  
[9] simply advise me that you do not wish to  
[10] testify and that decision will be honored?  
[11] **THE DEFENDANT:** Yes.  
[12] **THE COURT:** Is that clear to  
[13] you?  
[14] **THE DEFENDANT:** Yes.  
[15] **THE COURT:** Now, have you  
[16] thought about this?  
[17] **THE DEFENDANT:** Yes, I do not  
[18] wish to testify.  
[19] **THE COURT:** Having thought about  
[20] this have you made a decision?  
[21] **THE DEFENDANT:** Yes.  
[22] **THE COURT:** What is your  
[23] decision?  
[24] **THE DEFENDANT:** I do not wish to

[1] you or force you not to testify?  
[2] **THE DEFENDANT:** No.  
[3] **THE COURT:** You are doing this  
[4] of your own free will?  
[5] **THE DEFENDANT:** Yes.  
[6] **THE COURT:** Mr. Giuliani, there  
[7] is an instruction, 3.10(a) that reads as  
[8] follows:  
[9] "It is entirely up to the  
[10] defendant in every criminal trial whether or  
[11] not to testify. He has an absolute right  
[12] founded on the Constitution to remain silent.  
[13] You must not draw any inference of guilt or  
[14] any inference adverse to the defendant from  
[15] the fact that he did not testify."  
[16] Does your client wish me to give  
[17] that instruction?  
[18] **MR. GIULIANI:** Yes, Your Honor.  
[19] **THE COURT:** Would you discuss it  
[20] with him again so that I can note that a  
[21] discussion took place?  
[22] **MR. Giuliani:** Thank you, Your  
[23] Honor.  
[24] **THE COURT:** Mr. In, did you hear

[1] testify.  
[2] **THE COURT:** Is that your  
[3] decision?  
[4] **THE DEFENDANT:** Yes.  
[5] **THE COURT:** Is your decision  
[6] made of your own free will?  
[7] **THE DEFENDANT:** Yes.  
[8] **THE COURT:** Did you discuss this  
[9] with your attorney?  
[10] **THE DEFENDANT:** Yes.  
[11] **THE COURT:** Are you satisfied  
[12] with his services?  
[13] **THE DEFENDANT:** Yes.  
[14] **THE COURT:** Do you understand  
[15] not withstanding all of that that it is not  
[16] his decision, it's your decision?  
[17] **THE DEFENDANT:** Yes.  
[18] **THE COURT:** Is the decision not  
[19] to testify yours?  
[20] **THE DEFENDANT:** Yes.  
[21] **THE COURT:** Did you make it of  
[22] your own free will?  
[23] **THE DEFENDANT:** Yes.  
[24] **THE COURT:** Did anybody threaten

[1] me read the instruction?  
[2] **THE DEFENDANT:** Yes.  
[3] **THE COURT:** Did you hear your  
[4] attorney say he wished me to give that  
[5] instruction on your behalf?  
[6] **THE DEFENDANT:** Yes.  
[7] **THE COURT:** Once again there are  
[8] cases in the literature where defendant's  
[9] later on appeal that say I did not want that  
[10] instruction. So it's been my practice to ask  
[11] the defendant if he wants me to give that  
[12] instruction.  
[13] **THE DEFENDANT:** Yes.  
[14] **THE COURT:** Did you discuss this  
[15] with your attorney?  
[16] **THE DEFENDANT:** Yes.  
[17] **THE COURT:** I don't want to know  
[18] what the two of you discussed, I want to know  
[19] what decision you made.  
[20] **THE DEFENDANT:** Yes, I want the  
[21] instruction.  
[22] **THE COURT:** Did anyone promise  
[23] you anything, or threaten you, or force you to  
[24] make this decision?

[1] **THE DEFENDANT:** No.  
[2] **THE COURT:** Is it your decision?  
[3] **THE DEFENDANT:** Yes.  
[4] **THE COURT:** Is it made of your  
[5] own free will?  
[6] **THE DEFENDANT:** Yes.  
[7] **THE COURT:** Did you discuss it  
[8] with your attorney?  
[9] **THE DEFENDANT:** Yes.  
[10] **THE COURT:** Are you satisfied  
[11] with his services?  
[12] **THE DEFENDANT:** Yes.  
[13] **THE COURT:** Nevertheless, this  
[14] is your decision?  
[15] **THE DEFENDANT:** Yes.  
[16] **THE COURT:** John In's decision?  
[17] **THE DEFENDANT:** Yes.  
[18] **THE COURT:** I'll give the  
[19] instruction. Which brings us to the last part  
[20] of this which is the formal charging  
[21] conference.  
[22] So the Court hereby convenes a  
[23] formal charging conference.  
[24] The Court makes the following

[1] stipulation is. I charge the jury on expert  
[2] witnesses. I give consciousness of guilt,  
[3] flight. And the defendant's failure to  
[4] testify.  
[5] Are those among the "standard  
[6] instructions?"  
[7] **MS. BARALDI:** Yes, Your Honor.  
[8] **MR. GIULIANI:** Yes, Your Honor.  
[9] **THE COURT:** Are there any  
[10] requests?  
[11] **MS. BARALDI:** No, Your Honor.  
[12] **THE COURT:** Let me give you the  
[13] verdict sheet to look at and tell me if you  
[14] have any objection. Give one to each of the  
[15] attorneys.  
[16] That is merely a proposed  
[17] verdict sheet. I submit it to you for  
[18] corrections or objections. If you have  
[19] concerns about it, mark it up and I will  
[20] obviously make every effort to have the  
[21] verdict sheet reflect your request.  
[22] **MR. GIULIANI:** I believe it's  
[23] acceptable, Your Honor.  
[24] **THE COURT:** I told the two of

[1] **finding:**  
[2] The Court finds the defendant  
[3] has knowingly, intelligently, and voluntarily  
[4] exercised his right of silence and determined  
[5] that he will not be testifying.  
[6] What points of charge, if any,  
[7] are you requesting, Mr. Giuliani?  
[8] **MR. GIULIANI:** Your Honor, I  
[9] don't believe there are any other specific  
[10] points for charge that are necessary or unique  
[11] to this particular case, but for the no  
[12] adverse inference which we already discussed.  
[13] **THE COURT:** And the  
[14] Commonwealth?  
[15] **MS. BARALDI:** Your Honor, I  
[16] don't have any additional points for charge.  
[17] **THE COURT:** Both of you on  
[18] yesterday, off the record, said that you would  
[19] be satisfied with the standard instructions.  
[20] Mr. Giuliani said, in fact, he wanted to be  
[21] sure I charge false in one, false in all. And  
[22] I'm going to tell you that constitutes  
[23] standard instructions.  
[24] I charge the jury on what a

[1] you earlier that I don't have a great faculty  
[2] for names. Mr. Giuliani was successful on his  
[3] motion of acquittal on one of the three  
[4] robberies, I want to make sure we have the  
[5] right name remaining.  
[6] **MS. BARALDI:** You do.  
[7] **MR. GIULIANI:** You do, Your  
[8] Honor.  
[9] **THE COURT:** Now, if you look  
[10] at --  
[11] **MS. BARALDI:** Mr. Yun's name is  
[12] spelled incorrectly. It should be Y-U-N, it  
[13] is spelled H-U-N on the verdict sheet.  
[14] **THE COURT:** Okay. See if  
[15] there's anything else.  
[16] Counsel, what are you alleging  
[17] to be the objective of the conspiracy, robbery  
[18] and/or burglary?  
[19] **MS. BARALDI:** Yes, both robbery  
[20] and/or burglary.  
[21] **THE COURT:** And the overt act  
[22] that doesn't go on the sheet, but that's part  
[23] of it.  
[24] **MS. BARALDI:** The unlawful.



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[1] THE COURT: Do you have the  
[2] bills there?  
[3] MS. BARALDI: I do.  
[4] THE COURT: I think at some  
[5] point -- I mean, it can be any number of.  
[6] Took another's property; is that sufficient?  
[7] MS. BARALDI: Yes.  
[8] THE COURT: Mr. Giuliani and  
[9] Ms. Baraldi, do you agree that where there are  
[10] multiple alleged criminal objectives the jury  
[11] has to determine which one, all, or none,  
[12] which is why I have the interrogatory? Any  
[13] objection to that?  
[14] MR. GIULIANI: No, Your Honor.  
[15] MS. BARALDI: No, Your Honor.  
[16] THE COURT: I am going to get  
[17] the sheet corrected and will you guys be ready  
[18] to make your closings?  
[19] MS. BARALDI: Yes.  
[20] MR. GIULIANI: Yes.  
[21] THE COURT CRIER: Please remain  
[22] seated while the ladies and gentlemen enter  
[23] the courtroom.  
[24] - - -

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[1] occasion.  
[2] Members of the jury, now that  
[3] you have heard all of the evidence which is to  
[4] be presented in this case the next step is for  
[5] the attorneys to make their closing arguments.  
[6] Now, even though these arguments do not  
[7] constitute evidence, you should consider them  
[8] carefully.  
[9] In their arguments the attorneys  
[10] for both sides will call to your attention the  
[11] evidence to which they consider material and  
[12] they will ask you to draw certain inferences  
[13] from that evidence. You must keep in mind,  
[14] however, that you are not bound by the  
[15] attorneys recollection of the evidence. It is  
[16] your recollection of the evidence and yours  
[17] alone which must guide you in your  
[18] deliberations.  
[19] So if there is a discrepancy  
[20] between the attorney's recollection of the  
[21] evidence and your own you are obviously bound  
[22] by your recollection of the evidence. Nor are  
[23] you limited in your consideration of the  
[24] evidence to that which is mentioned by the  
[25] attorneys. You must, as jurors, consider all

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[1] (Jury enters the courtroom at  
[2] 11:52 a.m.)  
[3] - - -  
[4] THE COURT: Thank you, ladies  
[5] and gentlemen. You may be seated.  
[6] Mr. Giuliani, you may continue,  
[7] sir.  
[8] MR. GIULIANI: At this point in  
[9] time, the Defense would move for admission of  
[10] Defense Exhibits 1 through 7, and Defense  
[11] would rest.  
[12] THE COURT: Any objection?  
[13] MS. BARALDI: None, Your Honor.  
[14] THE COURT: Exhibits will be  
[15] received. The Defense rests.  
[16] Is the evidence closed, Counsel,  
[17] for both sides?  
[18] MS. BARALDI: Yes, Your Honor.  
[19] MR. GIULIANI: Yes, Your Honor.  
[20] THE COURT: Very well.  
[21] Ladies and gentlemen of the  
[22] jury, the first order of business is for you  
[23] to put your note pads and pens away. If you  
[24] would place them under your seat on this

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[1] of the evidence which you deem material to the  
[2] issues involved in this case.  
[3] Now to the extent that the  
[4] inferences which the attorneys ask you to draw  
[5] are supported by the evidence, and appeal to  
[6] your reason and judgment you may obviously  
[7] consider them in your deliberations.  
[8] Jurors, the attorneys may call  
[9] to your attention certain principles of law in  
[10] the course of their arguments. Please  
[11] remember you are not bound by any principle of  
[12] law mentioned by any attorney. You must on  
[13] your oath both accept and apply only the law  
[14] in which I instruct you. And you must apply  
[15] that law to the facts as you determine the  
[16] facts to be in reaching your verdict.  
[17] Now, ladies and gentlemen, under  
[18] the rules promulgated by the Supreme Court of  
[19] Pennsylvania, Mr. Giuliani, the attorney for  
[20] the defendant, Mr. In, will address you first  
[21] Followed thereafter by Ms. Baraldi, the  
[22] attorney for the Commonwealth. After which I  
[23] shall instruct you on the law which you must  
[24] accept and apply to the facts as you determine  
[25] the facts to be in reaching your verdict.



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[1] Mr. Giuliani, are you ready to  
[2] address the jury?  
[3] **MR. GIULIANI:** I am, Your Honor.  
[4] - - -  
[5] (Closing arguments to jury given  
[6] by counsel.)  
[7] - - -  
[8] (Jury instructions given by the  
[9] Court.)  
[10] - - -  
[11]  
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[24]  
[25]

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[1]  
[2] I hereby certify that the proceedings and  
[3] evidence are contained fully and accurately in the notes  
[4] taken by me on the trial of the above case, and this copy  
[5] is a correct transcript of the same.  
[6]  
[7]  
[8]  
[9]  
[10]  
[11] \_\_\_\_\_  
[12] Samanda Rios  
[13] Court Reporter  
[14]  
[15]  
[16]  
[17] (The foregoing certification of this  
[18] transcript does not apply to any reproduction of the same  
[19] by any means unless under the direct control and/or  
[20] supervision of the certifying reporter.)  
[21]  
[22]  
[23]  
[24]  
[25]

